

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 4, 2013 at 1:31 p.m.

1. 13-33078-A-13 ELIZABETH MULLEN MOTION TO
MMP-2 EXTEND AUTOMATIC STAY O.S.T.
10-29-13 [16]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

This is the second chapter 13 case filed by the debtor. A prior case, Case No. 13-26027, was dismissed on July 8, 2013 because the debtor failed to provide the trustee with her last filed tax return as required by 11 U.S.C. § 521(e), failed to give the trustee a Class 1 checklist as required by Local Bankruptcy Rule 3015-1(b)(6), and failed to propose a chapter 13 plan that did not modify a home mortgage in violation of 11 U.S.C. § 1322(b)(2). This case was filed on October 7.

Hence, the debtor's earlier chapter 13 case was dismissed within one year of the most recent petition.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay. A review of the docket reveals that the debtor has filed this motion to extend the automatic stay before the 30th day after the filing of the petition. The motion will be adjudicated before the 30-day period expires.

In order to extend the automatic stay, the party seeking the relief must demonstrate that the filing of the new case was in good faith as to the creditors to be stayed. For example, in In re Whitaker, 341 B.R. 336, 345 (Bankr. S.D. Ga. 2006), the court held: "[T]he chief means of rebutting the presumption of bad faith requires the movant to establish 'a substantial change in the financial or personal affairs of the debtor . . . or any other reason to conclude' that the instant case will be successful. If the instant case is one under chapter 7, a discharge must now be permissible. If it is a case under chapters 11 or 13, there must be some substantial change."

As explained in this motion, the debtor was unable to provide her attorney and the trustee with the tax return and the Class 1 checklist, and was unable to

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propose a modified plan, because the demands of her employment required her to be absent from her home for an extended period. Since the dismissal, the debtor has gathered together the necessary paperwork and is prepared to timely give the trustee the required documentation to prosecute the case and has proposed a plan that appears to deal to with the issues that prevented confirmation of a plan in the prior case. This is a sufficient change in circumstances rebut the presumption of bad faith.